

Appendix VIII

Template SSM Tripartite Agreement – sponsoring Clearing Member incorporated in France

SSM TRIPARTITE AGREEMENT

dated [_____]

BETWEEN

OTC CLEARING HONG KONG LIMITED,

[CLEARING MEMBER]

(Registered No. [_____])

and

[SPONSORED SETTLEMENT MEMBER]

(Registered No. [_____])

THIS AGREEMENT is dated [●] and made between:

- (1) **OTC Clearing Hong Kong Limited**, a company incorporated under the laws of Hong Kong (registration number: 1745273) and having its registered office at 8/F, Two Exchange Square, 8 Connaught Place, Central, Hong Kong ("**OTC Clear**");
- (2) [●], incorporated in [France] and having its registered office at [●] (the "**Clearing Member**"); and
- (3) [●], incorporated in [France] and having its registered office at [●] (the "**Sponsored Settlement Member**").

BACKGROUND

- (A) The Parties are entering into this Agreement to simplify the payments between OTC Clear and the Clearing Member in respect of Contracts and between such Clearing Member and its Client under the Corresponding Client Transactions.
- (B) This Agreement sets out the contractual terms on which Sponsored Settlement Members may make direct payments of SSM Payment Amounts to OTC Clear, and vice versa.

IT IS AGREED as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"**Clearing Procedures**" means the OTC Clearing Hong Kong Limited Clearing Procedures, as amended from time to time.

"**Clearing Rules**" means the OTC Clear Rates and FX Derivatives Clearing Rules, as amended from time to time, and shall include the Clearing Procedures.

"**CM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b)(i)(i) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**CM Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**OTC Clear Corresponding Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**OTC Clear Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

"**Party**" means a party to this Agreement.

"**SSM Corresponding Client Transaction Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

"**SSM Parallel Debt**" has the meaning given to that term in paragraph (b) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*).

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Clearing Rules or the Clearing Procedures have the same meanings when used in this Agreement.

1.3 Primacy of this Agreement

In the event of any inconsistency or conflict between the provisions of:

- (a) this Agreement; and
- (b) the provisions of the Clearing Rules, the Clearing Procedures, the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member or any other agreement entered into between all or any of the Parties,

the provisions of this Agreement shall prevail.

2 Delegations

2.1 In accordance with, and subject to, the provisions of Articles 1336 and *seq.* of the French Civil Code:

- (a) the Clearing Member (as delegating entity, *délégant*) hereby irrevocably and unconditionally delegates OTC Clear (as delegated debtor, *délegué*) to the Sponsored Settlement Member (as beneficiary, *délégataire*) (the "**First Delegation**"). OTC Clear (as delegated debtor) hereby irrevocably and unconditionally accepts such First Delegation. As a result of the First Delegation, OTC Clear shall pay, as primary obligor and not as a surety, directly to the Sponsored Settlement Member the SSM Payment Amounts due by OTC Clear pursuant to, and in accordance with the conditions set out in, Clause 3.1 below. The Sponsored Settlement Member (as beneficiary) hereby expressly accepts: (i) the conditions of the First Delegation; and (ii) OTC Clear as delegated debtor (*délegué*); and
- (b) the Clearing Member (the delegating entity, *délégant*) hereby irrevocably and unconditionally delegates the Sponsored Settlement Member (the delegated debtor, *délegué*) to OTC Clear (as beneficiary, *délégataire*) (the "**Second Delegation**" and, together with the First Delegation, the "**Delegations**"). The Sponsored Settlement Member (as delegated debtor) hereby irrevocably and unconditionally accepts such Second Delegation. As a result of the Second delegation, the Sponsored Settlement Member shall pay, as primary obligor and not as a surety, directly to OTC Clear the SSM Payment Amounts due by the Sponsored Settlement Member pursuant to, and in accordance with the conditions set out in, Clause 3.2 below. OTC Clear (as beneficiary) hereby expressly accepts: (i) the conditions of the Second Delegation; and (ii) the Sponsored Settlement Member as delegated debtor (*délegué*).

2.2 Each of the Delegations constitutes a "*délégation imparfaite*" within the meaning of Article 1338 of the French Civil Code. It is expressly agreed that the Delegations shall not constitute a waiver or release of the Clearing Member's obligations under either of the Clearing Rules, the Clearing Procedures or the Client Clearing Agreement. As a consequence, the Clearing Member, as *délégant*, remains liable: (i) vis-à-vis OTC Clear of any SSM Payment Amounts referred to in Clause 3.2(a) below to the extent set out in Clause 3.2(b); and (ii) vis-à-vis the Sponsored Settlement Member of SSM Payment Amounts referred to in Clause 3.1(a) below, to the extent set out in Clause 3.1(b).

- 2.3 The First Delegation shall automatically terminate when the Clearing Member's obligations under the Corresponding Client Transactions are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below. The second Delegation will terminate when the Clearing Member's obligations under the Contracts are satisfied in full and/or upon the termination of Direct Payment Obligations referred to in Clause 3.4 below.

3 Direct Payment Obligations

3.1 OTC Clear Direct Payment Obligations

- (a) OTC Clear shall, subject to paragraph (b) of this Clause 3.1 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to the Sponsored Settlement Member amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time to time by OTC Clear to the Clearing Member if and when those SSM Payment Amounts are due and payable by OTC Clear to the Clearing Member in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.
- (b) Each Party acknowledges and agrees that the obligations of OTC Clear to pay amounts under paragraph (a) of this Clause 3.1 (each amount payable pursuant to those obligations being an **"OTC Clear Parallel Debt"**) are separate and independent from, and shall not in any way limit or affect, any obligations of OTC Clear to pay SSM Payment Amounts to the Clearing Member (each amount payable pursuant to those obligations being an **"OTC Clear Corresponding Debt"**) nor shall any OTC Clear Parallel Debt be limited or affected in any way by any OTC Clear Corresponding Debt provided that:
- (i) an OTC Clear Parallel Debt shall be automatically and irrevocably discharged to the extent that the Clearing Member's obligations under a Corresponding Client Transaction to pay to the Sponsored Settlement Member amounts which correspond to that OTC Clear Corresponding Debt (each amount payable pursuant to those obligations being a **"CM Corresponding Client Transaction Debt"**) has or have been irrevocably paid or discharged upon such payment or discharge;
 - (ii) an OTC Clear Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding OTC Clear Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) subject to Clause 3.4 (*Termination of Direct Payment Obligations*), OTC Clear shall:
 - (A) be required to make payment to the Sponsored Settlement Member in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.1 and shall have no discretion to pay the corresponding OTC Clear Corresponding Debt instead; and
 - (B) have the right to receive payment from the Sponsored Settlement Member in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(i)(ii) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) below.

3.2 Sponsored Settlement Member Direct Payment Obligations

- (a) The Sponsored Settlement Member shall, subject to paragraph (b) of this Clause 3.2 and to Clause 3.4 (*Termination of Direct Payment Obligations*), pay to OTC Clear amounts equal to (and in the same currency as) any SSM Payment Amounts which are payable from time

to time by the Clearing Member to OTC Clear if and when those SSM Payment Amounts are due and payable by the Clearing Member to OTC Clear in accordance with the terms of the Contracts governing those SSM Payment Amounts, the Clearing Rules and the Clearing Procedures.

- (b) Each Party acknowledges and agrees that the obligations of the Sponsored Settlement Member to pay amounts under paragraph (a) of this Clause 3.2 (each amount payable pursuant to those obligations being an "**SSM Parallel Debt**") are separate and independent from, and shall not in any way limit or affect, any obligations of the Clearing Member to pay SSM Payment Amounts to OTC Clear (each amount payable pursuant to those obligations being a "**CM Corresponding Debt**"), nor shall any SSM Parallel Debt be limited or affected in any way by any CM Corresponding Debt (or the obligations of the Sponsored Settlement Member to pay to the Clearing Member amounts which correspond to that CM Corresponding Debt under a Corresponding Client Transaction (each amount payable pursuant to those obligations being an "**SSM Corresponding Client Transaction Debt**")), provided that:
- (i) an SSM Parallel Debt shall be automatically and irrevocably discharged to the extent that the corresponding CM Corresponding Debt has or have been irrevocably paid or discharged upon such payment or discharge; and
 - (ii) a CM Corresponding Debt shall be automatically and irrevocably discharged to the extent that the corresponding SSM Parallel Debt has been irrevocably paid or discharged upon such payment or discharge; and
 - (iii) notwithstanding anything to the contrary in the Client Clearing Agreement between the Clearing Member and the Sponsored Settlement Member and subject to Clause 3.4 (*Termination of Direct Payment Obligations*), the Sponsored Settlement Member shall:
 - (A) be required to make payment to OTC Clear in respect of SSM Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of this Clause 3.2; and
 - (B) have the right to receive payment from OTC Clear in respect of OTC Clear Parallel Debt, which shall have the effect set out in paragraph (b)(ii) of Clause 3.1 (*OTC Clear Direct Payment Obligations*).

The Sponsored Settlement Member acknowledges and agrees that it shall not have the discretion to make payment in respect of an SSM Corresponding Client Transaction Debt, in lieu of its obligation to make payment in respect of the corresponding SSM Parallel Debt.

3.3 Nature of arrangements

- (a) Each Party acts in its own name and as principal (and not as trustee or agent of any person) for the purposes of this Clause 3 (*Direct Payment Obligations*), and no claims in respect of any OTC Clear Corresponding Debt, OTC Clear Parallel Debt, CM Corresponding Debt, SSM Parallel Debt, CM Corresponding Client Transaction Debt or SSM Corresponding Client Transaction Debt shall be held on trust or as agent for any person pursuant to this Clause 3 (*Direct Payment Obligations*).
- (a) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, operate to discharge any obligation of any Party other than as, and only to the extent, expressly stated in this Clause 3 (*Direct Payment Obligations*).

- (b) Nothing in this Clause 3 (*Direct Payment Obligations*) is intended to, or does, create in favour of any person any mortgage, charge, lien, pledge, encumbrance or other security interest.

3.4 Termination of Direct Payment Obligations

- (a) If any Contract giving rise to any SSM Payment Amounts to which this Agreement applies (or any Corresponding Client Transaction relating to that Contract) is transferred or terminated (including, without limitation, by means of that Contract being transferred between Client Accounts and House Accounts of the Clearing Member or that Contract being ported to a Replacement Clearing Member (or its termination if porting does not occur)), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the SSM under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) in respect of the SSM Payment Amounts governed by that Contract following the time at which such transfer or termination occurs.
- (b) If the Sponsored Settlement Member ceases to be a Sponsored Settlement Member (as defined in, and for the purposes of, the Clearing Rules), no amounts shall be payable by OTC Clear under paragraph (a) of Clause 3.1 (*OTC Clear Direct Payment Obligations*) or by the Sponsored Settlement Member under paragraph (a) of Clause 3.2 (*Sponsored Settlement Member Direct Payment Obligations*) following the time at which such event occurs.
- (c) This Clause 3.4 shall not have the effect of reducing the amount of any OTC Clear Corresponding Debt, any CM Corresponding Debt, any CM Corresponding Client Transaction Debt or any SSM Corresponding Client Transaction Debt.

4 Representations

The Sponsored Settlement Member represents and warrants, on a continuing basis, that it will satisfy the SSM Eligibility Criteria, and acknowledges and agrees that satisfaction of the SSM Eligibility Criteria is a condition precedent to this Agreement.

5 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

6 Governing law

This Agreement is governed by Hong Kong law, save for Clause 2 (*Delegation*), which will be governed by French law.

7 Enforcement

- (a) The courts of Hong Kong have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement) (a "**Dispute**"), provided that the courts of Hong Kong will apply French law in order to interpret Clause 2 and/or assess the validity and enforceability of the Delegations created pursuant to this Agreement.
- (b) The Parties agree that the courts of Hong Kong are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) Without prejudice to any other mode of service allowed under any relevant law, [●]:
 - (i) irrevocably appoints [●] as its agent for service of process in relation to any proceedings before the Hong Kong courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify [●] of the process will not invalidate the proceedings concerned.

8 Third Party Rights

- (a) A person who is not a Party has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (the “**Third Parties Ordinance**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **OTC Clearing Hong Kong Limited**

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date:

Signed for and on behalf of [●]

Name:

Title:

Date: